

Labor; membership engaged in harness racing. An organization whose members are engaged in harness racing in a specific geographic area as drivers, trainers, and horse owners, most of whom are independent contractors or entrepreneurs, and that negotiates with operators of area raceways for larger purses, better hours, and safer operating conditions does not qualify for exemption as a labor organization under section 501(c)(5) of the Code.

Advice has been requested whether the nonprofit organization described below qualifies for exemption from Federal income tax under section 501(c)(5) of the Internal Revenue Code of 1954.

The organization was formed to advance the interests of its members who are drivers, trainers, and horse owners engaged in harness racing in a specific geographic area. Most of the trainers and drivers are independent contractors and are self-employed for purposes of section 1402 of the Code rather than employees. In addition to agreed amounts received from horse owners for feeding, caretaking, exercising, and managing a horse, or for driving a horse, the trainer and driver of a winning horse each get a percentage of the owner's purse.

The organization negotiates with the operators of area raceways for larger purses, better hours, and safer operating conditions.

Section 501(c)(5) of the Code provides for the exemption from Federal income tax of labor organizations.

Section 1.501(c)(5)-1 of the Income Tax Regulations provides that organizations contemplated by section 501(c)(5) of the Code are those which have no net earnings inuring to the benefit of any member, and have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

To be a labor organization under section 501(c)(5) of the Code, an organization must primarily serve the interests of labor. See Rev. Rul. 59-6, 1959-1 C.B. 121, and Rev. Rul. 77-5, 1977-1 C.B. 146. The term 'labor' is commonly accepted as meaning the performance of service as employees. See Rev. Rul. 76-420, 1976-2 C.B. 153.

In this case, most of the organization's members are entrepreneurs or independent contractors. The economic interests served by the organization's activities are not those of employees.

Accordingly, the organization does not qualify for exemption from Federal income tax as a labor organization under section

501(c)(5) of the Code. Compare Rev. Rul. 74-167, 1974-1 C.B. 134, which holds that the inclusion of some self-employed persons in the membership of a labor organization does not affect its exempt status under section 501(c)(5) when most of the members are employees and the organization works for better wages and working conditions within their particular trade.